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ROBERT POOLEY

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT POOLEY,

Defendants.

Case No. 2:21-cr-00111-WBS

**MOTION *IN LIMINE* #5 (TO EXCLUDE  
EVIDENCE OF 2014 SUSPENSION OF MR.  
POOLEY'S TANDEM EXAMINER  
RATING)**

Date: April 29, 2024

Time: 9:00 A.M.

Judge: Hon. William B. Shubb

**I. MOTION**

Defendant Robert Pooley moves *in limine* to exclude evidence of his previous 10-day suspension from being a Tandem Examiner in February 2014 (the “2014 suspension”), more than two years before the alleged fraudulent conduct.

**II. FACTUAL BACKGROUND**

According to the indictment, Mr. Pooley became a Tandem Examiner with the USPA and UPT in 2010. Dkt. 1 at 4, ¶ 20.

In 2014, his Tandem Examiner rating was suspended. According to the suspension letter, he “failed to sufficiently verify that one of [his] tandem-instructor candidates had been in the sport of skydiving for the three-year minimum. As the instructor of that course, [he] had a duty to verify that each candidate met the requirements.” The letter further opined that this “offense[.]”

“were it to be public knowledge, would likely bring public contempt upon [Mr. Pooley], skydivers, and the USPA.” His Tandem Examiner rating was therefore suspended for 10 days. Before his ratings were restored, Mr. Pooley did a refresher training.

More than a year later, in August 2015, Mr. Pooley’s Tandem Examiner rating was suspended again (the “2015 suspension”), this time for a period of one year. The allegedly fraudulent conduct occurred in May through August 2016, while Mr. Pooley was suspended from the 2015 suspension.

### III. ARGUMENT

#### A. The 2014 suspension is irrelevant and inadmissible under Rule 404.

Mr. Pooley’s 2014 suspension is not relevant to the allegations of fraud and identity theft in 2016. It does not comprise part of the alleged scheme. It could only be admissible as “other acts” evidence under Rule 404(b).

However, the evidence is also improper under 404. The 2014 violation of USPA and UPT’s rules by failing to verify that a candidate had three years of skydiving experience is not “similar to the offense charged.” *United States v. Mayans*, 17 F.3d 1174, 1181 (9th Cir. 1994). The offense charged is misrepresenting to prospective candidates that Mr. Pooley was a Tandem Examiner when his Examiner rating was actually suspended. The 2014 suspension is unrelated.

#### B. The 2014 suspension will confuse the issues and risk that jurors will convict Mr. Pooley on an improper basis.

The jury issue in this case is not whether Mr. Pooley failed to follow the rules of being a Tandem Examiner. The issue is whether – while suspended from being an Examiner – Mr. Pooley led candidates to believe that he was an Examiner.

Introducing the 2014 suspension will distract from the true issue and could lead the jury to convict on an improper basis. *See* FED. R. EVID. 403. In particular, if the jury hears that Mr. Pooley had a previous suspension, it risks jurors convicting him on the belief that he has messed up enough and should be punished.

### IV. CONCLUSION

Mr. Pooley respectfully requests that the Court grant his motion to exclude evidence of the

1 2014 suspension of his Tandem Examiner rating.  
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4 Date: April 1, 2024

Respectfully submitted,

5 HEATHER E. WILLIAMS  
6 Federal Defender

7 /s/ Mia Crager  
8 MIA CRAGER  
9 MEGHAN McLOUGHLIN  
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